Bombay High Court
Commissioner Of Income-Tax vs Thana Electricity Supply Ltd. on 22 April, 1993
Equivalent citations: 1994 206 ITR 727 Bom
Author: . B Saraf
Bench: B Saraf, U Shah
JUDGMENT Dr. B.P. Saraf J.

1. By this reference under section 256(1) of the Income-tax Act, 1961 ("the Act"), the Income-tax Appellate Tribunal has referred the following question of law to this court for opinion at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the claim of development rebate on the cost of meters installed by the assessee company at the residential or office premises of its consumers, was not at variance with the provisions of section 33(6) of the Act ?"

2. The assessee is an electric supply undertaking and its business is to supply electrical energy to its consumers. For the assessment year 1974-75, the Income-tax Officer determined the development rebate admissible to the assessee at Rs. 8,01,917 and allowed Rs. 5,59,744 against the total income available for the purpose. The development rebate determined by the Income-tax Officer included a sum of Rs. 61,155 relatable to the cost of meters installed by the assessee company at the residential or office premises of its consumers. However, the order of the Income-tax Officer was revised by the Commissioner of Income-tax ("the Commissioner") under section 263 of the Act, as the Commissioner was of the opinion that the development rebate on the cost of meters installed by the assessee company at the residential or office premises of the consumers had been erroneously allowed by the Income-tax Officer in violation of the provisions of section 33(6) of the Act. After issuing a show-cause notice to the assessee and on hearing the assessee's representative, the Commissioner directed the Income-tax Officer to withdraw the development rebate in respect of the cost of meters in question, as the meters were installed in the residential and office premises of the consumers. The assessee took the matter in appeal before the Tribunal. Before the Tribunal, it was contended on behalf of the assessee that section 33(6) of the Act was applicable only in case of machinery and plant such as air-conditioners and other machinery installed by the assessee in its own office premises or residential accommodation or guest houses. This contention of the assessee was accepted by the Tribunal. The Tribunal held that the office premises or residential accommodation including the guest house referred to in sub-section (6) of section 33 relates to the office premises or residential accommodation including the guest house of the assessee concerned, i.e., either belonging to the assessee or in its occupation on lease or licence, etc., and the restrictions contained therein do not apply to machinery and plant installed in the office premises or residential accommodation of persons other than the assessee itself. In that view of the matter, the Tribunal cancelled the order of the Commissioner and restored the order of the Income-tax Officer.

3. Aggrieved by the order of the Tribunal, the Commissioner of Income-tax applied for a reference of the question of law arising out of the order of the Tribunal to this court and the Income-tax Appellate Tribunal, on being satisfied that a question of law did arise, has referred the question set

out above under section 256(1) of the Act to this court.

4. Learned counsel for the Revenue submitted before us that the whole approach of the Tribunal to the issue was erroneous. The Tribunal, according to counsel, while reading section 33(6) of the Act had added thereto the words "belonging to it" to restrict the application thereof only to the machinery and plant installed in the office premises or residential accommodation including any accommodation in the nature of guest house belonging to the assessee or in occupation of the assessee whereas the section does not contain any such limitation. Counsel for the Revenue, therefore, submitted that the order of the Tribunal cannot be sustained on that ground itself. The further submission of counsel for the Revenue was that on a plain reading of section 33(6) of the Act, it is clear that the Legislature has stated in very clear terms that no deduction by way of development rebate shall be allowed in respect of any machinery or plant installed in any officer premises or any residential accommodation including accommodation in the nature of guest house. The only exception to this restriction is contained in the proviso thereto which admittedly has no application to the present case. That being the position, according to counsel, the conclusion arrived at by the Tribunal cannot be sustained.

5. The submissions of learned counsel for the assessee, on the other hand, are as follows :

1. The Tribunal was correct in holding that section 33(6) of the Act applies only to machinery and plant installed in the office and residential accommodation, etc., belonging to the assessee or in the occupation of the assessee.

2. The Tribunal having taken such a view in regard to the interpretation of section 33(6) of the Act, even if the High Court comes to a different conclusion on the interpretation of section 33(6) of the Act, it should accept the interpretation given by the Tribunal, that being an interpretation beneficial to the assessee. Reliance was placed in this connection on the decisions of the Supreme Court in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 and CIT v. Naga Hills Tea Co. Ltd. [1973] 89 ITR 236.

3. That similar controversy having been decided by the Calcutta High Court in CIT v. Tinnevelly Tuticorin Tea Investment Co. Ltd. [1989] 179 ITR 550, and there being no decision of any other High Court to the contrary, this court is bound to follow the decision of the Calcutta High Court and answer the question referred to it accordingly even if it holds a contrary view in the matter.

6. In support of this contention, reliance is placed on the decisions of this court in Maneklal Chunilal and Sons Ltd. v. CIT [1953] 24 ITR 375, CIT v. Chimanlal J. Dalal and Co. [1965] 57 ITR 285, CIT v. Tata Sons Pvt. Ltd. [1974] 97 ITR 128, CIT v. Jayantilal Ramanlal and Co. [1982] 137 ITR 257 and CIT v. (Smt.) Godavaridevi Saraf [1978] 113 ITR 589.

7. On a careful consideration of the submissions of learned counsel for the assessee, we find that before taking up the issue involved in the question of law referred to us in this case for consideration, it is necessary to first decide the last submission of learned counsel that this court, while interpreting of an all-India statute like the Income-tax Act, is bound to follow the decision of any other High Court and to decide accordingly even if its own view is contrary thereto, in view of

the practice followed by this court in such matters. Because, if we are to accept this submission, it will be an exercise in futility to examine the real controversy before us with a view to decide the issue, as in that case in view of the Calcutta decision whatever may be our decision on the question of law referred to us, we would be bound to follow the decision of the Calcutta High Court and answer the question accordingly. This submission, in our opinion, is not tenable as it goes counter not only to the powers of this court to hear the reference and decide the questions of law raised therein and to deliver its judgment thereon but also to the doctrine of binding precedent known as stare decisis. We shall deal with the reasons for the same at some length a little later.

8. We have also carefully gone through the decisions of this court referred to by counsel for the assessee in support of his above contention. In our opinion, the observations in those decisions have not been properly appreciated. They have been too widely interpreted. There appears to be a misconception about the nature thereof and their binding effect. We shall also refer to those decisions and the relevant observations therein and discuss their nature. Before doing that, it may be expedient to briefly state the doctrine of binding precedent, commonly known as stare decisis. At the outset, it may be appropriate to point out the well settled legal position that what is binding on the courts is the ratio of a decision. There is a clear distinction between on the courts is the ratio of the decision, obiter dicta and observations from the point of view of precedent value or their binding effect. It will be necessary in this case to explain this distinction. But before we do so, we may discuss the principle of binding precedent. This will take us to the question whose decision binds whom.

9. For deciding whose decision is binding on whom, it is necessary to know the hierarchy of the courts. In India, the Supreme Court is the highest court of the country. That being so, so far as the decisions of the Supreme Court are concerned, it has been stated in article 141 of the Constitution itself that :

"The law declared by the Supreme Court shall be binding on all courts within the territory of India."

10. In that view of the matter, all courts in India are bound to follow the decisions of the Supreme Court.

11. Though there is no provision like article 141 which specifically lays downs the binding nature of the decisions of the High Courts, it is a well accepted legal position that a single judge of a High Court is ordinarily bound to accept as correct judgments of courts of co-ordinate jurisdiction and of the Division Benches and of the Full Benches of his court and of the Supreme Court. Equally well settled is the position that when a Division Bench of the High Court gives a decision on a question of law, it should generally be followed by a co-ordinate Bench in the subsequent case wants the earlier decision to be reconsidered, it should refer the question at issue to a larger Bench.

12. It is equally well settled that the decision of one High Court is not a binding precedent on another High Court. The Supreme Court in Valliama Champaka Pillai v. Sivathanu Pillai, , dealing with the controversy whether a decision of the erstwhile Travancore High Court can be made a binding precedent on the Madras High Court on the basis of the principle of stare decisis, clearly

held that such a decision can at best have persuasive effect and not the force of binding precedent on the Madras High Court. Referring to the States Reorganisation Act, it was observed that there was nothing in the said Act or any other law which exalts the ratio of those decisions to the status of a binding law nor could the ratio decidendi of those decisions be perpetuated by invoking the doctrine of stare decisis. The doctrine of stare decisis cannot be stretched that far as to make the decision of one High Court a binding precedent for the other. This doctrine is applicable only to different Benches of the same High Court.

13. It is also well-settled that though there is no specific provision making the law declared by the High Court binding on subordinate courts, it is implicit in the power of supervision conferred on a superior Tribunal that the Tribunals subject to its supervision would confirm to the law laid down by it. It is in that view of the matter that the Supreme Court in East India Commercial Co. Ltd. v. Collector of Customs, :

"We, therefore, hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence, and they cannot ignore it....."

14. This position has been very aptly summed up by the Supreme Court in Mahadeolal Kanodia v. Administrator General of West Bengal, :

"Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view, the result would be utter confusion. The position would be equally bad where a judge sitting singly in the High Court is of opinion that the previous decision of another single judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench."

15. The above decision was followed by the Supreme Court in Baradakanta Mishra v. Bhimsen Dixit, , wherein the legal position was reiterated in the following words (at page 2469) :

"It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunal subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."

16. Having decided whose decision binds whom, we may next examine what is binding. It is well settled that it is only the ratio decidendi that has a precedent value. As observed by the Supreme

Court in S. P. Gupta v. President of India, : "It is elementary that what is binding on the court in a subsequent case is not the conclusion arrived at in a previous decision, but the ratio of that decision, for it is the ratio which binds as a precedent and not the conclusion." A case is only an authority for what it actually decides and not what may come to follow logically from it. Judgments of courts are not to be construed as statutes (see Amar Nath Om Parkash v. State of Punjab,).

17. While following precedents, the court should keep in mind the following observations in Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai :

"It is trite, going by Anglophonic principles, that a ruling of a superior court is binding law. It is not of scriptural sanctity but is of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decision, exalting the doctrine of precedents into a prison-house of bigotry, regardless of varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting those matters which may lurk in the record. Whatever be the position of a subordinate court's casual observations, generalisations and subsilentio determinations must be judiciously read by courts of co-ordinate jurisdiction."

18. Decision on a point not necessary for the purpose of the decision or which does not fall to be determined in that decision becomes an obiter dictum. So also, opinions on questions which are not necessary for determining or resolving the actual controversy arising in the case partake of the character of obiter. Obiter observations, as said by Bhagwati J. (as his Lordship then was) in Addl. District Magistrate, Jabalpur v. Shivakant Shukla, , would undoubtedly be entitled to great weight, but "an obiter cannot take the place of the ratio. Judges are not oracles." Such observations do not have any binding effect and they cannot be regarded as conclusive. As observed by the Privy Council in Baker v. The Queen [1975] 3 All ER 55 (at page 64), the court's authoritative opinion must be distinguished from propositions assumed by the court to be correct for the purpose of disposing of the particular case. This position has been made further clear by the Supreme Court in a recent decision in CIT v. Sun Engineering Works P. Ltd. [1992] 198 ITR 297, at page 320, where it was observed :

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this court. A decision of this court takes its colour from the question involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this court, to support their reasoning."

19. In the above decision, the Supreme Court, also quoted with approval, the following note of caution given by it earlier in Madhav Rao Jivaji Rao Scindia Bahadur v. Union of India, :

"It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

20. It is thus clear that it is only the ratio decidendi of a case which can be binding - not obiter dictum. Obiter, at best, may have some persuasive efficacy.

21. From the foregoing discussion, the following propositions emerge :

(a) The law declared by the Supreme Court being binding on all courts in India, the decisions of the Supreme Court are binding on all courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.

(b) The decisions of the High Court are binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.

(c) The position in regard to the binding nature of the decisions of a High Court on different Benches of the same court may be summed up as follows :

(i) A single judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question (see Food Corporation of India v. Yadav Engineer and Contractor,).

(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench.

(iii) Where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred it reached after full consideration of the earlier decisions.

(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect. By no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or Tribunal within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have

interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be the conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all courts in the country by virtue of article 141 of the Constitution.

22. We shall now analyse the decisions of this court on which reliance has been placed by learned counsel for the assessee in support of his contention that a decision of any other High Court on all India statute like the Income-tax Act is binding even on this court and on the Tribunals outside the jurisdiction of that High Court.

23. We may first refer to the decision of this court in Maneklal Chunilal and Sons Ltd. v. CIT [1953] 24 ITR 375. Reliance was placed on the following observations at page 385 of the report (ITR) :

"A Special Bench of the Madras High Court has taken the view favorable to the Commissioner and contrary to the view suggested by Mr. Palkhivala and in conformity with the uniform policy which we have laid down in income-tax matters; whatever our own view may be, we must accept the view taken by another High Court on the interpretation of the section of a statute which is an all India statute."

24. Counsel also referred to the decision of this court in CIT v. Chimanlal J. Dalal and Co. [1965] 57 ITR 285, where for the sake of uniformity among the High Courts in the matter of interpretation of the Income-tax Act, the decision of the Gujarat High Court was followed by this court.

25. We have perused the above decisions wherein it is observed that (at page 290) : "barring some exceptions, it has been the general policy laid down by this court in income-tax matters that whatever our own view may be, we should follow the view taken by another High Court on the interpretation of a section." Referring to the observations in Maneklal Chunilal and Sons Ltd. [1953] 24 ITR 375 (Bom) quoted above, it was further observed (at page 290) :

"This is the practice of this court, and, as we have already stated, it has been generally followed by this court, barring certain exceptions like where inadvertently the decision was not brought to its notice or where in the decision of the other courts some relevant provisions of law had been omitted to be considered. The decision of the Gujarat High Court is a very elaborate one, considering all the relevant provisions of law. This is, therefore, not a case in which we should depart from the aforesaid policy of this court."

26. Reliance was also placed on the decision of this court in CIT v. Tata Sons Private Ltd. [1974] 97 ITR 128, particularly, on the following observations (at page 131) :

"The practice and the policy established is that in these matters whatever our own view may be we must accept the view taken by another High Court on the interpretation of the section of a statute which is an all India statute."

27. It was pointed out that this practice was followed in the above case in answering the reference.

28. Reference was also made by counsel for the assessee to the decision of this court in CIT v. Jayantilal Ramanlal and Co. [1982] 137 ITR 257. wherein, emphasising the need for uniform decisions, it was observed that the decision of one High Court should be followed by another High Court. Our attention was also drawn to a decision of this court in CIT v. Smt. Godavaridevi Saraf [1978] 113 ITR 589, where it was observed that an authority like the Income-tax Appellate Tribunal acting anywhere in the country has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision of any other High Court on that question.

29. In reply, learned counsel for the Revenue submitted before us that the aforesaid observations of this court in the above decisions are observations by way of obiter dicta and not the ratio decidendi of those cases. It was pointed out that in none of the above cases the court was called upon to decide whether the decision of other High Courts are biding on this court. The only issues before the court were those raised in the questions referred by the Tribunal. While deciding the issues arising before it, the court made the above observations only by way of obiter dicta. These observations cannot be held to be the ratio decidendi of those cases Referring to the observations in Smt. Godavari Devi [1978] 113 ITR 589 (Bom), that an all-India Tribunal acting anywhere should follow the decision of the High Court even though of a different State so long as there was no contrary decision of any other High Court on the point, it was submitted by counsel for the Revenue that this observation itself goes to show that the court was aware of the fact that different High Courts were not bound by decisions of each other and, as such, there may be contrary decisions of different High Courts on the same point. Learned counsel also submitted that the above observations, if held to be the ratio decidendi, go counter to the decisions of the Supreme Court, and the well-settled doctrine of stare decisis.

30. We have care fully considered the various decisions referred to above in the light of the rival submission of learned counsel for the assessee and the Revenue. On a careful reading of the observations in the light of the questions which were before the court for determination in those cases, we find it difficult to accept these observations as the ratio decidendi of those decisions. These are observations by way of obiter dicta which, at best, may have persuasive efficacy but not the binding character of a precedent. This is also evident from the decision of this court in CIT v. Jayantilal Ramanlal and Co. [1982] 137 ITR 257, where, at page 265, after referring to earlier decisions it was observed :

"We are aware that the practice is not uniform among the High Courts, but nevertheless we are of opinion that it is a desirable one. Unless the judgment of another High Court dealing with and identical or comparable provision can be regarded as per incuriam, it should ordinarily be followed."

31. This court, in the above case, discussed the real issue before it at great length in the light of the facts of the case and ultimately decided to answer the question in line with the decisions of the Kerala and Punjab and Haryana High Courts. The aforesaid observations leave no scope for doubt that the court merely observed what according to it is desirable and did not lay down any principle of law making the decisions of other High Courts binding precedents for this court. Any other

construction of the observations in the above cases will lead to an anomalous situation as it will have the effect of giving the decisions of other High Courts the status of law binding on all courts or Tribunals throughout the country - a status which the Constitution, by virtue of article 141, has conferred only on the judgment of the Supreme Court. If for the sake of uniformity, the decisions of any High Courts and Tribunals in the country, the very distinction between the precedent value of the Supreme Court decisions and the High Court decisions will be obliterated. Such a situation is neither contemplated by the Constitution nor is it in consonance with the principle laid down by the Supreme Court and the doctrine of stare decisis.

32. From the above discussion, it is clear that the observations of this court on which much reliance has been placed by counsel for the assessee in support of his contention that the Calcutta High Court decision is binding on this court are not the ratio of those decisions which may be binding. These observations, at the most, may be termed as obiter dicta. Even that may not be correct. As these observations were made by the court while emphasising the necessity of maintaining uniformity in the matter of interpretation of all India statutes, in the words of Chagla C. J. in Mohandas Issardas v. A. N. Sattanathan, , they may be more appropriately termed as "casual observations". The distinction between the ratio decidendi and obiter dictum has been very beautifully explained by Chagla C.J. in the above case (at page 1160) in the following words (at page 115 of AIR 1955 Bom) :

"..... an obiter dictum is an expression of opinion on a point which is not necessary for the decision of a case. This very definition draws a clear distinction between a point which is necessary for the determination of a case and point which is not necessary for the determination of the case. But in both cases points must arise for the determination of the Tribunal. Two questions may arise before a court for its determination. The court may determine both although only one of them may be necessary for the ultimate decision of the case. The question which was necessary for the determination of the case would be the 'ratio decidendi'; the opinion of the Tribunal on the question which was not necessary to decide the case would be only an 'obiter dictum'."

33. It was rightly held by Chagla C.J. (at page 1161 of 56 BLR) (at page 116 of AIR 1955 Bom) :

"It cannot be suggested that the doctrine of 'obiter dicta' was so far extended as to make the courts bound by any and every expression of opinion either of the Privy Council or of the Supreme Court, whether the question did or did not arise for the determination of the higher judicial authority."

34. In the above decision, a distinction has also been drawn between obiter dictum and casual observations made by the court. Even in regard to the decisions of the Supreme Court, it was clearly held that it would be incorrect to say that every opinion of the Supreme Court would be binding on the High Courts in India. The only opinion which would be binding would be an opinion expressed on a question that arose for the determination of the Supreme Court. The above decision of this court and various observations of Chagla C.J. therein fully support our view that the observations of this court about the practice of following the decisions of other High Courts are not binding.

35. Our conclusion that the decisions of other High Courts are not binding on this court also gets full support from the scheme of income-tax itself. We may refer in this connection to section 260 of the

Act which, so far as relevant, reads a follows :

"260(1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on who such decision is founded, and a copy of the judgment shall be sent under the seal of the court and the signature of the Registrar to the Appellate Tribunal which shall pass such order as are necessary to dispose of the case conformably to such judgment."

36. A plain reading of this section clearly goes to show that what the High Court is required to do under this section is to decide the question of law raised in the case before it and to deliver "its judgment thereon containing the grounds on which such decision if founded". This court, therefore, has to give its own decision and also the reasons therefore. While doing so, undoubtedly, the court is free to follow the decision of any High Court in its judgment. The Legislature itself was fully aware of the fact that in the process of deciding the questions of law under section 260 of the Act, there may be a conflict of opinion of different High Courts in respect of a particular question of law and in that view of the matter, under section 257 of the Act, has empowered the Tribunal to make a reference directly to the Supreme Court if it finds it expedient to do so on account of a conflict in the decisions of the High Court. Section 257 reads as follows :

"257. If, on an application made under section 256, the Appellate Tribunal is of the opinion that, account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court."

37. A conjoint reading of the above provisions of the Income-tax Act clearly goes to show that the Act itself contemplates independent decisions of various High Courts on the question of law referred to them. It has visualised the possibility of conflict of opinion between different High Courts on the same question of law and has also made specific provision to take care of such a situation in suitable cases. In fact, in the light of the clear language of section 260 of the Act, every High Court is required to give its own opinion on a particular question of law. It should not follow, as a matter of course, only with a view to achieve uniformly in the matter of interpretation, the decision of another High Court, if such decision is contrary to its own opinion. Because, such action will be contrary to the clear mandate of section 260 of the Act. It will amount to abdication of its duty by the High Court to give "its decision" on the point of law referred to it. We are, therefore, of the clear opinion that decision of none High Court is not binding on another High Court. We reiterate the propositions laid down by us in paragraph 17 (at page 738).

38. Before we proceed to decide the question of law referred to us on the merits, it is necessary also to decide the second submission of learned counsel for the assessee that on interpretation of section 33(6) of the Act., even if this court takes a view which is against the assessee, in view of the fact that the Tribunal has taken a view in favour of the assessee and the Calcutta High Court has also taken a view in its favour we should adopt a view beneficial to the assessee following the decisions of the Supreme Court in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 and CIT v. Naga Hills Tea Co. Ltd. [1973] 89 ITR 236. We have considered the submission. We, however, find it difficult to accept

this submission, as in our opinion, the observations of the Supreme Court in those decisions have been stretched too far. The Supreme Court in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 (at page 195), merely observed :

"If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favour the assessee, more particularly so because the provision relates to imposition of penalty."

39. Similarly, in CIT v. Naga Hills Tea Co. Ltd. [1973] 89 ITR 236, at page 240, the Supreme Court had observed as follows :

"If a provision of a taxing statute can be reasonably interpreted in two ways, that interpretation which is favorable to the assessee, has got to be accepted. This is a well-accepted view of law."

40. The above observations will be applicable only if the court which is called upon to decide the issue is satisfied that two views are reasonably possible, one of them being favorable to the assessee. As observed by the Supreme Court in Escorts Ltd. v. Union of India [1993] 199 ITR 43 (at page 60) :

"In our view, there was no difficulty at all in the interpretation of the provisions. The mere fact that a baseless claim was raised by some over-enthusiastic assessees who sought a double allowance or that such claim may perhaps have been accepted by some authorities is not sufficient to attribute any ambiguity or doubt as to the true scope of the provision...."

41. It is, therefore, clear that it is the satisfaction of the court interpreting the law that the language of the taxing provision is ambiguous or reasonably capable of more meanings than one, which is material. If the court does not think so, the fact that two different views have been advanced by parties and argued forcefully, or that one such view which is favorable to the assessee has been accepted by some Tribunal or High is favorable to the assessee has been accepted by some Tribunal or High Court, by itself will not be sufficient to attract the principle of beneficial; interpretation. In the instant case, as we are not satisfied with the interpretation given by the Tribunal or the Calcutta High Court to section 33(6) of the Act, in our opinion, accepting those decisions by applying the test of beneficial interpretation does not arise.

42. We now turn to the merits of case before us and for the purpose to the question of law referred to us. The facts of the case have already been set out above. The controversy is in a very narrow compass. The answer hinges on the interpretation of section 33(6) of the Act. Section 33(6) as it stood at the material time, so far as relevant, is in the following terms :

"33.(6) Notwithstanding anything contained in the foregoing provisions of this section, no deduction by way of development rebate shall be allowed in respect of any machinery or plant installed after the 31st day of March, 1965, in any officer premises or any residential accommodation, including any accommodation in the nature of a guest house :

43. Provided that....."

43. It is evident that section 33(6) is a non-obstante provision. It specifies the plant and machinery in respect of which deduction by way of development rebate shall not be allowed. The reference is to "any machinery or plant installed in any office premises or any residential accommodation including any accommodation in the nature of guest house". The language is plain and simple. There is no ambiguity in it. In that view of the matter, if any plant and machinery is installed in any officer premises or in any residential accommodation, etc., development rebate would not be allowable in respect thereof. We do not find any word or expression in the above provision which may justify any restrictive interpretation of the above sub-section to confine its application only to officer premises or residential accommodation "owned or occupied by the assessee". Trying to do so will amount to adding words to the statute which is not a permissible rule of interpretation. In that view of the matter, we find it difficult to agree with the decision of the Calcutta High Court in CIT v. Tinnevelly Tuticorin Tea Investment Co. Ltd. [1989] 179 ITR 550, where in it has taken a view that the office premises or residential accommodation referred to in sub-section (6) of section 33 relates to "the office premises or residential accommodation of the assessee concerned, i.e., either belonging to the assessee or in its occupation otherwise, that is, on lease or license, etc.", and that the disallowance contemplated by section 33(6) does not relate to plant and machinery installed in the office premises or residential accommodation of persons other than the assessee concerned.

44. We, therefore, take up the next submission of learned counsel for the assessee, that is, whether the electric meters put up by the assessee, which is an electric supply undertaking, for the purpose of measuring the electricity consumed by the consumers fall within the expression plant and machinery installed in residential or office accommodation as contemplated by section 33(6) of the Act. In this connection, learned counsel for the assessee referred to the circular of the Board dated October 11, 1965, where in it is stated that this sub-section was intended to deny development rebate in respect of plant and machinery such as air-conditioners, frigidaires, room heaters, electric fans, etc. We find force in this submission of learned counsel for the assessee. It may be mentioned that sub-section (6) was inserted in section 33 by the Finance Act, 1965, with effect from April 1, 1965. The Board, by its Circular No. 3-P (LXXVI-57) of 1965, dated October 11, 1965, wile explaining the above provision made a clear that the effect of this provision was that development debate will not be admissible in respect of machinery or plant such as air-conditioners, frigidaires, room heaters, electric fans, etc., installed in any office premises or residential accommodation including guest houses. This circular of the Board makes it clear that the plant and machinery referred to in section 33(6) of the Act would mean only the plant and machinery of the types set out in its circular which are of use to the occupants of the office, residence or guest house, Electric meters, definitely, do not fall in this category. The meter is in fact necessary only for the purpose of measuring the consumption of electricity. It has no independent use of its own. In fact, it is not for the use in the office, residence, etc. It is a necessary adjunct to the supply line of electricity and the last point wherefrom starts the private line of the consumer. Though the meter is "plant and machinery" in the technical sense, in the context of section 33(6) of the Act, it cannot be said to be a plant or machinery installed in the office premises or residential accommodation, etc. Plant and machinery referred to in section 33(6) of the Act will only mean those plant or machinery which are intended for use in the office or the residence. The meter does not meet this description. It will, therefore, not fall within the section different grounds, that the Tribunal was right in holding that section 33(6) of the Act was not attracted and the assessee was entitled to development rebate in respect of electric

meters, no matter where they are installed whether in the office premises, residential accommodation, etc., or elsewhere.

45. In view of our above conclusion, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Revenue.

46. Under the facts and circumstances of the case, we make no order as to costs.